

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 MISC 00290

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Julius Klein Diamonds, LLC;

Plaintiff,

- against -

Gemological Institute of America, Inc.;
and Tat Keung Yee;

Defendants.

----- x
CASE NO.:



APPLICATION FOR TEMPORARY RESTRAINING ORDER

Plaintiff Julius Klein Diamonds, LLC (“JKD” or “Plaintiff”), pursuant to Rule 65 of the Federal Rules of Civil Procedure, hereby moves this Court for a Temporary Restraining Order against defendants Gemological Institute of America, Inc. (“GIA”) and Tat Keung Yee, an individual who recently submitted a 3.08 carat diamond (GIA Certificate Number 1112901343) to GIA at its Hong Kong facility (individually, “YTK” and collectively, “Defendants”).

In support of this application, Plaintiff incorporates the Declaration of Jerome J. Lawton and the accompanying Memorandum in Support of its Application for a Temporary Restraining Order and further states, as follows:

1. Plaintiff has no adequate remedy at law for the claims outlined in the incorporated declaration and memorandum of law.
2. Plaintiff will suffer immediate and irreparable harm unless a temporary restraining order is entered.

3. Plaintiff is likely to succeed on the merits of its claims, because, among other reasons, Plaintiff will be able to demonstrate that (a) it is the rightful owner of the 3.08 Diamond; (b) it never consented to the sale or transfer of the 3.08 Diamond; and (c) YTK acted without authorization to interfere with Plaintiff's ownership of the 3.08 Diamond.

4. The balance of harms weighs in favor of issuing the requested relief.

5. Granting Plaintiff the requested relief is in the public interest.

6. A proposed Temporary Restraining Order is attached hereto as Exhibit A and incorporated herein.

7. Plaintiff has taken reasonable steps to notify GIA and its counsel of these proceedings. GIA's counsel was informed by email on August 28, 2012, that Plaintiff would file this Application. Thus, GIA had advance warning of this filing. Copies of all papers filed by Plaintiff, including without limitation the Declaration of Jerome J. Lawton, the Application for Temporary Restraining Order, and the Memorandum in Support of Application for Temporary Restraining Order, are being served by special process server on August 28, 2012 to GIA as follows:

Ivy R. Cutler
Manager of Records & Recovery GIA Laboratory
Gemological Institute of America (GIA)
580 Fifth Avenue, Suite 200
New York, NY 10036-4794

Capricci Barush
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, NY 10020-1104

8. Plaintiff has taken reasonable steps to notify YTK of these proceedings. YTK was notified by fax on August 28, 2012 that Plaintiff will file this application. Copies of all papers filed by Plaintiff, including without limitation the Declaration of Jerome J. Lawton, the

Application for Temporary Restraining Order, and the Memorandum in Support of Application for Temporary Restraining Order, are being served by fax and Federal Express on August 28, 2012 as follows:

Mr. Tat Keung Yee
9/F, Caroline Centre, Lee garden
28 Yun Ping Road
Causeway Bay, Hong Kong
011-952 9093 7513 Phone
011-852-254-3512 Fax

For the foregoing reasons, Plaintiff respectfully requests that the Court enter a Temporary Restraining Order, substantially in the form proposed in Exhibit A.

Dated: August 28, 2012.

Respectfully submitted,

By:

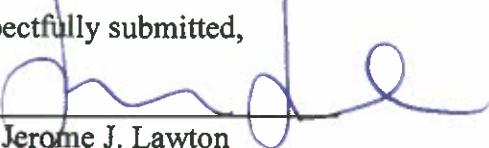

Jerome J. Lawton
Skadden, Arps, Slate, Meagher & Flom
Four Times Square
New York, New York 10036
Telephone: (212) 735-2982
Fax: (917) 777-2982
Attorneys for Plaintiff

Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Julius Klein Diamonds, LLC;

: Plaintiff, CASE NO.:

: - against -

: Gemological Institute of America, Inc.;
and Tat Keung Yee;

: Defendants.

----- x

PROPOSED ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon the accompanying declaration of Jerome J. Lawton, the Memorandum of Law in Support of Plaintiff's Application for Temporary Restraining Order, the arguments of counsel on record and for good cause shown,

IT IS HEREBY ORDERED that Defendants show cause before this Court, at Room ___, United States Courthouse, 500 Pearl Street, in the City, County and State of New York, on the ___ day of _____, 2012, at ___ or as soon thereafter as counsel may be heard, why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining GIA from releasing the 3.08 Diamond to Tat Keung Yee pending determination as to the ownership of the 3.08 Diamond;

IT IS FURTHER ORDERED that, sufficient reason having been shown therefore, pursuant to Rule 65, Fed. R. Civ. P., GIA is temporarily restrained from releasing the 3.08 Diamond to Tat Keung Yee pending determination as to the true ownership of the 3.08 Diamond;

IT IS FURTHER ORDERED that Plaintiff post bond with the Clerk of Court in the sum of \$ _____, by _____, 2012;

IT IS FURTHER ORDERED that service of a copy of this Order to Show Cause and Temporary Restraining Order shall be made upon GIA by _____, 2012; and

IT IS FURTHER ORDERED that service of a copy of this Order to Show Cause and Temporary Restraining Order shall be made upon Tat Keung Yee by fax, Federal Express and email by _____, 2012.

IT IS SO ORDERED.

Dated: New York, NY
 August __, 2012.

UNITED STATES DISTRICT JUDGE